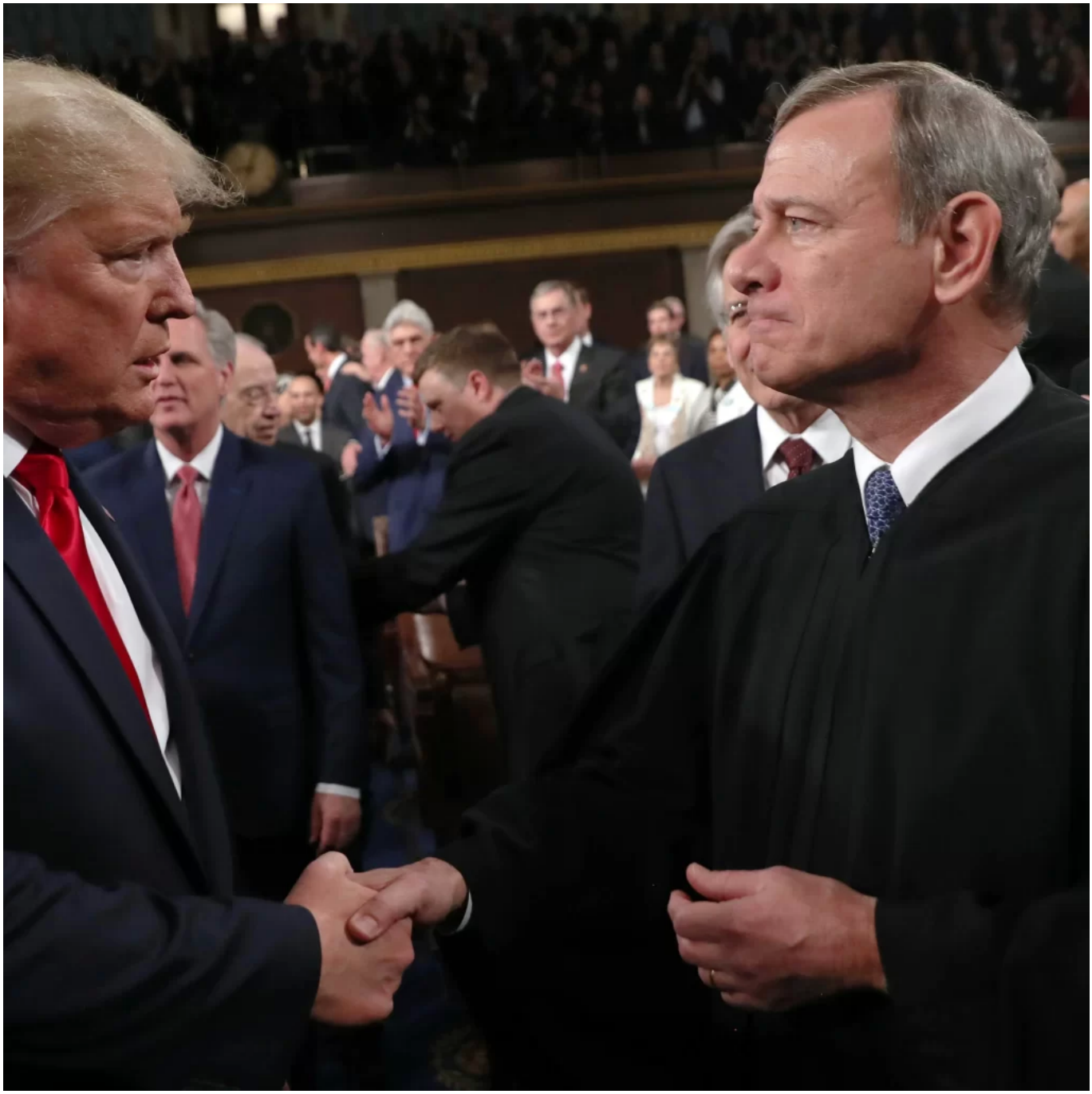
In bashing Trump, New York Times sides with him against Chief Justice Roberts



by Lev Tsitrin

Something stirred the righteous indignation of the *New York Times* to its deepest of depths. “A judge appointed by former

President Donald J. Trump" ruled in his favor, disrupting the review of documents retrieved from Mar-a-Lago by the FBI. Isn't that outrageously monstrous?

New York Times' Charlie Savage and a bunch of law professors he interviewed certainly think so. "A federal judge's extraordinary decision on Monday to interject in the criminal investigation into former President Donald J. Trump's hoarding of sensitive government documents at his Florida residence showed unusual solicitude to him, legal specialists said."

Perhaps so – but that's precisely my point. Just four years ago the very same *New York Times* chided the then-President Trump in an article by its Supreme Court correspondent Adam Liptak for "remarks … in which Trump complained about a decision from Judge Jon S. Tigar, of the United States District Court in San Francisco, who ordered the administration to resume accepting asylum claims from migrants no matter where or how they entered the United States. Mr. Trump's legal analysis of the ruling consisted of the observation that Judge Tigar was "an Obama judge."" The article approvingly cited Chief Justice John G. Roberts Jr. who "defended the independence and integrity of the federal judiciary … rebuking President Trump for calling a judge who had ruled against his administration's asylum policy "an Obama judge." The chief justice said that was a profound misunderstanding of the judicial role. "We do not have Obama judges or Trump judges, Bush judges or Clinton judges," he said in a statement. "What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them. That independent judiciary is something we should all be thankful for."

Well, that was then, and this is now. *New York Times'* Charlie Savage clearly sees a causal link between the fact that "Judge Cannon [is] a Trump appointee," and her decision in Trump's favor. This feeling is buttressed by the chorus of professor's testimonies to the effect that it was "a genuinely

unprecedented decision by a judge."

I won't argue; perhaps it was. But what escapes the *New York Times* and the law professors they cite, is that their narrative abundantly proves Trump's contention that "there are Trump judges and Obama judges" – and that they rule according to their ideology rather than law. Chief Justice Robert's clearly loses out when the *New York Times* fails to refer to Judge Cannon as a "dedicated judge doing level best to do equal right to those appearing before her" but openly implies that her decision is due to her being a "Trump judge." Put simply, the *New York Times* is in full agreement with Trump: judicial independence touted by Chief Justice Roberts is merely an independence to favor whom the judge want to favor.

That's all there is to it. I know better than any professor or journalist how federal judges decide cases. Their decisions do not answer the question of "was plaintiff's argument stronger than defendant's, or was it the other way around?" as the ubiquitous statues of Lady Justice would have us believe. They answer a very different question – a question of "who do I want to win, plaintiff or defendant?" To that end, when making a decision judges evaluate judges' own argument, not parties'. The "rule of law" is an urban myth; there is no such thing – there is only the rule of judges. This is how judicial decision-making (I would not call this charade a "process") is designed to operate. Hence, the court victory hinges on whether it was "Trump judge" or "Obama judge" who heard the case – because different judges literally hear different cases that utilize totally different argument, since that argument is judges' own. And this arrangement is fully supported by law which, after all, is made by judges – and in *Pierson v Ray* judges decided to give themselves the right to act from the bench "maliciously and corruptly" so as to be able to decide cases arbitrarily, and not be tethered to the parties' argument.

Interestingly, the *New York Times* and its ilk does not want to

cover our officially-acknowledged “corrupt and malicious” judging. To make judging impartial as it is supposed to be under the Constitutional guarantee of the “due process of the law” is not, apparently, in press’ interest. All it wants, is that cases be decided by “Obama judges.” That is when things go really well, as far as the *New York Times* and suchlike are concerned. But a ruling by a “Trump judge” throws the media – and its readers, if one is to judge by the howls on Twitter, into a mad rage. And, needless to say, the law professors stand ready to condemn the abomination that is a “Trump judge.” But to say a cross word about judicial fraud that has become the standard *modus operandi* on the federal bench, and allows arbitrary judging? To report on it? Heaven – and judges – forbid!

Lev Tsitrin is the founder of Coalition Against Judicial Fraud, cajfr.org